UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re Paradigm Technology Inc., a California Corporation Debtor.	Case No. 94-52142 Chapter 11 **MOTIONS TO EXTENDS CLAIMS BAR DATE**

INTRODUCTION

Before the Court for consideration are: (1) the Debtor's Motion to Extend Claims Bar Date and for Determination Regarding Treatment of Claim of Merrill Corp.; (2) Merrill's Countermotion to Determine Scope of § 1141 Discharge; and (3) the Debtor' Application for Injunction.

FACTS

Paradigm Technology attempted to issue and initial public offering in 1993, In that effort, the Chairman of the Board, James Timmons, absent explicit Board authorization, engaged Merrill Corporation to print the registration statements. Merrill is in the business of financial and legal printing. In October 1993, Merrill distributed a first draft of registration materials to various representatives for Paradigm. Merrill was assured in January 1994 that the initial public offering remained on track. However, shortly thereafter, Paradigm determined that it would abandon the efforts to issue an initial publis offereing but would file a prepackaged chapter 11 plan. Paradigm filed its chapter 11 petition on March 30, 1994.

Because Merrill was not on Paradigm's vendor list, it was not included in Paradigm's schedules and, as a consequence, did not receive a notice of the filing, the bar date, or the dates for the disclosure statement and plan confirmation hearings. The debtor's plan, which provides for a 30% distribution to unsecured creditors, was confirmed on June 7, 1994 without Merrill's participation.

On November 15, 1994, the debtor received its first invoice dated May 31, 1994 from Merrill. The invoices seeks payment of $27,566.76 based on the printing services rendered in connection with the proposed initial public offering. Merrill commenced an action in Superior Court against the debtor to collect its claim, asserting that it is unaffected by the discharge under the confirmed plan.

DISCUSSION

The issue is the scope of the discharge under a confirmed chapter 11 plan.

Section 1141(d)(1)(A), which sets forth the effect of confirmation, provides:

> Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of the plan discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title whether or not (i) a proof of claim is based on such debt is filed or deemed filed under section 501 of this title; (ii) such claim is allowed under section 502 of this title; or (iii) the holder of such claim has accepted the plan.

Specifically, the determinative question on this motion is whether the claim of a creditor omitted from the debtor's schedules is discharged. Courts that have addressed the issue uniformly hold that when a creditor's rights are being adjudicated, constitutional due process under the Fifth Amendment requires adequate notice to the creditor. That is, in order for the debt to the creditor to be discharged, the creditor must have received formal notice of the proceeding, the bar date for filing proofs of claim, and the dates of the hearings on the disclosure statement and plan. confirmation Otherwise, the creditor is not bound by the terms of the debtor's plan, and its claim is not discharged. **In re Unioil, 948 F.2d 678 (10th Cir. 1991)**; Spring Valley Farms, Inc. v. Crow, 863 F.2d 832 (11th Cir. 1989); Reliable Elec. Co. v. Olson Constr. Co., 726 F.2d 620 (10th Cir. 1984); **In re Dartmoor Homes, Inc., 175 B.R. 659 (Bankr. N.D. Ill. 1994); In re Leading Edge Products, Inc., 120 B.R. 616 (Bankr. D. Mass. 1990); In re Northeastern Software, Inc., 111 B.R. 387 (Bankr. D. Conn. 1990); In re Turning Point Lounge,**

Ltd., 111 B.R. 44 (Bankr. W.D.N.Y. 1990). This line of cases rely on established Supreme Court authority addressing the requirement of due process in bankrutpcy proceedings. City of New York v. New York, N.H. & H.R. Co., 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1952); **Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950)**.

In **In re Dartmoor Homes, Inc., 175 B.R. 659, 670 (Bankr. N.D. Ill. 1994)** the court stated:

> [T]o determine what constitutes adequate notice, case law interpreting the Bankruptcy Code distinguishes between types of bnakruptcy cases. If a creditor knows that a chapter 7 or chapter 13 case is pending, even if the creditor discovered the bankruptcy through informal means, the creditor's actual knowledge satisfies due process concerns. *Cf.* 11 U.S.C. §§ 523(a)(3), 1141(d)(footnote omitted).
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> However, if the debtor is a corporate Chapter 11 debtor, the Supreme Court has said that "even creditors who have knowledge of a reorganization have the right to assume that they w ill receive reasonable notice of relevant dates before their claims are barred." City of New York v. New York, N.H. & H.R. Co., 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1952).
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> The weight of authority leads this court to conclude that a debtor's failure to give proper notice to a known but unscheduled creditor is not overcome by the unscheduled creditor's inquiry notice of the bar date.

A general awareness of the debtor's bankruptcy alone is insufficient to impose a duty on the creditor to inquire about significant dates; creditors have the right to assume that they will receive all notices required by statute before their claims are barred. City of New York v. New York, N.H. & H.R. Co., 344 U.S. 293. Not even actual knowledge of the bankruptcy will subject the claim of a creditor that did not receive formal notice of the proceeding to discharge. In re Unioil, 948 F.2d at 684. Therefore, even if Merrill had actual knowledge of Paradigm's bankruptcy, its claim is not discharged by the confirmed plan under section 1141(d).

It is significant whether the debtor is an individual or a corporate debtor in a chapter 11 case. **In re Green, 876 F.2d 854, 856 (10th Cir. 1989);** Reliable Elec. Co. v. Olson Constr. Co., 726 F.2d 620, 623 (10th Cir. 1984); **In re Christopher, 148 B.R 832, 835 (Bankr. N.D. Tex 1992), aff'd, 28 F.3d 512 (5th Cir. 1994)**.

Section 523(a)(3) provides:

> A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt neither

> listed nor scheduled under section 521(1) of this title, with the name, **if known to the debtor**, of the creditor to whom such debt is owed, in time to permit
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> (A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had **notice or actual knowledge** of the claim in time for such timely filing; or
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> (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of discharge-ability of such debt under one of such paragraphs, unless such creditor had **notice or actual knowledge** of the case in time for such timely filing and request. (emphasis added).

Section 1141(d)(2) makes clear that section 523(a)(3) affects only individual debtors in chapter 11 and not corporate debtors by stating "[t]he confirmation of a plan does not discharge an individual debtor from any debt excepted from discharge under section 523 of this title." See **Dartmoor Homes, Inc., 175 B.R. at 670 fn.26**.

However, the majority of these cases involve a debtor with knowledge of the omitted creditor's claim such that the claim is excluded from the discharge. This suggests that knowledge on the part of the debtor is required and is based on a desire to place liability on the party that bears the greater culpability for the omission. See, e.g., In re Dartmoor Homes, 173 B.R. at 661, 668. There appears to be a factual dispute as to whether the debtor, Paradigm, was aware of Merrill's potential claim before the bar date. Merrill asserts that certain principals of the debtor were aware of its claim. The debtor diputes the fact. A related legal issue is, if a representative of the debtor had actual knowledge of the claim, may that knowledge be imputed to the debtor for purposes of determining the scope of the discharge under section 1141(d).

A second potential factual issue is the reasonableness of the effort and the degree of diligence by the debtor to discover potential cliams to be scheduled. In these cases, the Court must balance the creditor's interest in adequate notice with the against the overall interest in efficient, final resolution of claims. Leading Edge, 120 B.R. at 619. The proper inquiry in evaluating the adequacy of notice is whether the debtor acted reasonably to inform affected creditors, that is, whether the notice method was reasonable under the circumstances. **In re Waterman Steamship Corp., 157 B.R. 220, 221 (S.D.N.Y. 1993)**.

CONCLUSION

Grant the injunction pending disposition of the motions, and set the matter for evidentiary hearing on the two factual issues. Also set a briefing schedule on the legal issue or issues.